

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RFP LLC,)
)
 Plaintiff,) Civil Action No. 10 Civ. 8159 (DLC)
)
 -against-)
)
 SCVNGR, INC.,) **REPLY TO COUNTERCLAIMS**
)
)
 Defendant.)
)
 ----- X
SCVNGR, INC.,)
)
)
 Third-Party Plaintiff,)
)
 -against-)
)
 BARRY ROSENBOOM,)
)
)
 Third-Party Defendant.)
)
 ----- X

Plaintiff RFP LLC (“RFP”), by its attorneys, Caplan & Ross, LLP, for its Reply to Defendant SCVNGR, Inc.’s Counterclaims (the “Counterclaims”), alleges as follows:

JURISDICTION AND VENUE

1. In response to Paragraph 1 of the Counterclaims, admits that Defendant purports to bring its Counterclaims pursuant to 28 U.S.C. §§ 2201, 2202, 1338 and 1367(a), and otherwise states that it contains legal conclusions to which no response is required.

2. Admits the allegations contained in Paragraph 2 of the Counterclaims.

THE PARTIES

3. Upon information and belief, admits the allegations contained in Paragraph 3 of the Counterclaims.

4. Admits the allegations contained in Paragraph 4 of the Counterclaims.

THE FACTS

5. Admits the allegations contained in Paragraph 5 of the Counterclaims that from 2003 through 2008 RFP held and sponsored scavenger contests around Valentine's Day under its trademark "Race for the Rock," and denies the remaining allegations.

6. Denies the allegations contained in Paragraph 6 of the Counterclaims.

7. Denies the allegations contained in Paragraph 7 of the Counterclaims, except admits that some promotional and news materials for the event held in February 2008 contained the phrase "6th Annual Race for the Rock."

8. Admits the allegations contained in Paragraph 8 of the Counterclaims that RFP has never held, sponsored, or licensed a contest titled "Seventh Annual Race for the Rock."

9. Admits the allegations contained in Paragraph 9 of the Counterclaims that RFP did not hold, sponsor or license a scavenger hunt under the trademark RACE FOR THE ROCK on or around Valentine's Day in 2009.

10. Admits the allegations contained in Paragraph 10 of the Counterclaims that RFP did not hold, sponsor or license a scavenger hunt under the trademark RACE FOR THE ROCK on or around Valentine's Day in 2010.

11. Denies the allegations contained in Paragraph 11 of the Counterclaims.

12. Denies the allegations contained in Paragraph 12 of the Counterclaims.

13. Denies the allegations contained in Paragraph 13 of the Counterclaims.

14. Denies the allegations contained in Paragraph 14 of the Counterclaims.

15. Denies the allegations contained in Paragraph 15 of the Counterclaims.

16. Denies the allegations contained in Paragraph 16 of the Counterclaims.

17. Denies the allegations contained in Paragraph 17 of the Counterclaims.

FIRST CAUSE OF ACTION

18. In response to Paragraph 18 of the Counterclaims, repeats and realleges each and every response set forth in Paragraphs 1 through 17 as if set forth herein.
19. Denies the allegations contained in Paragraph 19 of the Counterclaims, and otherwise states that it contains a legal conclusion to which no response is required.
20. Denies the allegations contained in Paragraph 20 of the Counterclaims.

SECOND CAUSE OF ACTION

21. In response to Paragraph 21 of the Counterclaims, repeats and realleges each and every response set forth in Paragraphs 1 through 20 as if set forth herein.
22. Denies the allegations contained in Paragraph 22 of the Counterclaims.
23. Denies the allegations contained in Paragraph 23 of the Counterclaims.
24. Denies the allegations contained in Paragraph 24 of the Counterclaims.
25. Denies the allegations contained in Paragraph 25 of the Counterclaims.
26. Denies the allegations contained in Paragraph 26 of the Counterclaims.

THIRD CAUSE OF ACTION

27. In response to Paragraphs 27 through 33 of the Counterclaims, RFP states that no response is required, as RFP has filed a motion to dismiss the Counterclaims' Third Cause of Action pursuant to Federal Rules of Civil Procedure 12(b)(6).

FOURTH CAUSE OF ACTION

28. In response to Paragraphs 34 through 39 of the Counterclaims, RFP states that no response is required, as RFP has filed a motion to dismiss the Counterclaims' Fourth Cause of Action pursuant to Federal Rules of Civil Procedure 12(b)(6).

FIRST AFFIRMATIVE DEFENSE

29. The Counterclaims fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

30. Defendant's counterclaims are barred by the doctrine of unclean hands.

WHEREFORE, Plaintiff-Counterclaim Defendant RFP LLC respectfully requests that a Judgment be entered dismissing the Counterclaims against it, and awarding RFP LLC its costs and disbursements incurred in defending this action, including its attorneys' fees incurred, and granting RFP LLC such other, further and different relief as the Court deems just and proper.

Dated: New York, New York
December 30, 2010

CAPLAN & ROSS, LLP

By: /s/ Brian D. Caplan
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